

7.	-वही-	-वही-	चीन जन. गण.	चीन जन. गण. सहित कोई अन्य देश	क्रम सं. 1 से 6 के उत्पादक के अलावा कोई अन्य उत्पादक	5529	प्रति मी. टन	अमेरिकी डॉ.
8.	-वही-	-वही-	चीन जन. गण. को छोड़कर कोई अन्य देश	चीन जन. गण.	कोई अन्य उत्पादक	5529	प्रति मी. टन	अमेरिकी डॉ.

#### ण. आगे की प्रक्रिया

131. इस सिफारिश के कारण केंद्र सरकार के आदेश के विरुद्ध कोई अपील अधिनियम के संगत प्रावधानों के अनुसार सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय अधिकरण के समक्ष की जाएगी।

अनंत स्वरूप, संयुक्त सचिव एवं निर्दिष्ट प्राधिकारी

### MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

(DIRECTORATE GENERAL OF TRADE REMEDIES)

#### NOTIFICATION

New Delhi, the 8th June, 2021

#### FINAL FINDINGS

**Subject: Anti-dumping Investigation concerning imports of “Natural Mica based Pearl Industrial Pigments excluding cosmetic grade” originating in or exported from China PR.**

#### **A. BACKGROUND OF THE CASE**

**F. No. 6/8/2020-DGTR:** Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as the ‘Act’) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules thereof, as amended from time to time (hereinafter referred to as the ‘Rules’), thereof.

1. The Designated Authority (hereinafter referred to as “Authority”) received an application from M/s. Sudarshan Chemical Industries Limited (hereinafter also referred to as “Applicant”) requesting initiation of anti-dumping investigation under the Act and the Rules on imports of “Natural Mica based Pearl Industrial Pigments excluding cosmetic grade”, (hereinafter also referred to as “subject goods” or “product under consideration” or “PUC”) originating in or exported from China PR and United States of America The Applicant namely, M/s. Sudarshan Chemical Industries Limited, has provided the prescribed information in the Application.
2. The Authority, on the basis of sufficient prima facie evidence submitted by the Applicant, issued a public notice vide notification No. 6/8/2020-DGTR dated 9<sup>th</sup> May, 2020, published in the Gazette of India, initiating the investigation in accordance with Section 9A of the Act read with Rule 5 of the Rules to determine the existence, degree and effect of the alleged dumping of the subject goods originating in or exported from the China PR (hereinafter referred to as “Subject Country”) and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the alleged injury to the Domestic Industry. The imports from USA were noted to be non-injurious.

#### **B. PROCEDURE**

3. The procedure described below has been followed with regard to the investigation:
  - a. The Authority notified the Embassy of the subject country in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 5 supra.

- b. The Authority issued a public notice dated 9<sup>th</sup> May 2020 published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of subject goods from subject country.
- c. The Authority sent a copy of the initiation notification dated 9<sup>th</sup> May 2020, to the Embassy of the subject country in India, the known producers and exporters from the subject country, known importers, importer/user Associations, and other interested parties, as per the addresses made available by the Applicant. The interested parties were advised to provide relevant information in the form and manner prescribed and make their submissions known in writing within the prescribed time-limit, in accordance with Rules 6(2) and 6(4) of the Rules.
- d. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Government of the subject country, through its Embassy in India in accordance with Rule 6(3) of the Rules supra.
- e. The Embassy of the subject country in India was also requested to advise the exporters/producers from the subject country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject country.
- f. The Authority, upon request made by the interested parties, granted extension of time to the interested parties to file their response as well as submissions. Vide communication dated 9<sup>th</sup> July 2020, the time was extended up to 18<sup>th</sup> July 2020.
- g. The Authority sent questionnaires to the following known producers/ exporters in the subject country in accordance with Rule 6(4) of the Rules:
  - i. M/s. Fujian Kuncai Technology
  - ii. M/s. Chesir Guangxi
  - iii. M/s. Rika Technology Company Limited
  - iv. M/s. Oxen Special Chemicals Company Limited
  - v. M/s. Zhejiang Coloray Technology Development Company Limited
  - vi. M/s. Pritty Pearlescent Pigments
- h. In response to the above notification, the following producers/exporters have responded and submitted exporter's questionnaire responses and/or legal submissions:
  - i. M/s. Nanyang Lingbao Pearl Pigment Company Limited Materials
  - ii. M/s. Rika Technology Company Limited
  - iii. M/s. Guangxi Chesir Pearl Material Company Limited
  - iv. M/s. Zhejiang Ruicheng New Material Company Limited
  - v. M/s. Jiangsu Pritty New Material Company Limited
  - vi. M/s. Fujian Kuncai Material Technology Company Limited
  - vii. M/s. Hebei Oxen New Material Company Limited
- i. The Authority sent questionnaires to the following known importers and users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules:
  - i. M/s. Asian Paints Limited
  - ii. M/s. FX Pigments Private Limited
  - iii. M/s. Kajal Chemicals
  - iv. M/s. KPL International Limited
  - v. M/s. Geochrome International
  - vi. M/s. Polychem Exports
  - vii. M/s. R.C. International

- k. In response to the above notification, following importers or users have responded and submitted importer/user questionnaire responses and/or legal submissions and/or registered as interested parties:
  - i. M/s. FX Pigments Private Limited
  - ii. M/s. R.C. International
  - iii. M/s. Kuncai International (India) Private Limited
- l. The Authority made available the non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties. A list of all interested parties was uploaded on DGTR's website along with the request therein to all of them to email the non-confidential version of their submissions to all other interested parties since the public file was not accessible physically due to the ongoing global pandemic.
- m. The period of investigation (POI) for the purpose of present investigation is 1<sup>st</sup> April 2019 to 31<sup>st</sup> March 2020 (12 months). The injury examination period has been considered as the period from April 2016 - March 2017; April 2017 - March 2018, April 2018 - March 2019 and the period of investigation.
- o. The Authority obtained transaction-wise import data from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and Directorate General of Systems & Data Management (DGS) for subject goods for the injury period, including the POI, and analysed the data after due examination of the transactions.
- p. The non-injurious price (hereinafter referred to as "NIP") based on the cost of production and reasonable profit to sell the subject goods in India, having regard to the information furnished by the Domestic Industry in accordance with Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules, has been worked out so as to ascertain whether ADD lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- q. The information provided by the Applicant and responding exporters was examined by the Authority by way of a table study, to the extent deemed necessary. Only such information with necessary rectification, wherever applicable, has been relied.
- r. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- s. Wherever an interested party has refused access to or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded this Final Finding on the basis of facts available.
- t. In accordance with Rule 6(6) of the Rules, the Authority also provided an opportunity to all interested parties to present their views orally in a hearing held on 26<sup>th</sup> February 2021. All the parties who had attended the oral hearing were provided an opportunity to file written submissions, followed by rejoinders, if any.
- u. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in this Final Finding.
- v. The Authority has considered all the arguments raised and information provided by all the interested parties at this stage, to the extent the same are supported by evidence and considered relevant to the present investigation.
- w. "\*\*\*\*" in this Final Finding represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- x. The exchange rate adopted by the Authority for the subject investigation is US\$1 71.65

#### **C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

4. At the stage of initiation, the product under consideration was defined as:

*"4. The PUC in the present investigation is "Natural Mica based Pearl Industrial Pigments excluding cosmetic grade".*

5. *The PUC is chemically titanium dioxide coated micaceous and lustrous pearlescent pigment and is commercially known in the marketplace as Titanium Dioxide or Iron Oxide coated Mica Pearl Pigment or Pearl Lustre Pigments or Pearl Pigments. It is extensively used to impart colours and other effects such as certain inorganic pigments/colouring agents giving lustrous/ shining frosted effects, such as pearlescent effects, metallic effects, for coating inks and plastics application.*
6. *The product is classified under the Chapter 32 of the Customs Tariff Act, 1975 (51 of 1975) under sub heading 3206 11. The Customs classification is, however, indicative only and in no way binding on the scope of the present investigation."*

### C.3. Submissions of domestic industry

5. The domestic industry has submitted as follows with regard to product under consideration and like article:
  - i. Cosmetic grade has been specifically excluded from the scope of product under consideration.
  - ii. The product manufactured by domestic industry is like article to the product imported from the subject country.
  - iii. Consumers use the product manufactured by the domestic industry and the Chinese producers interchangeably.
  - iv. As regards automotive grade, the domestic industry is manufacturing and selling the product under consideration and carried out tests in an in-house machine that mimics varying weather conditions in an accelerated time frame.

### C.2. Submissions by other interested parties

6. The other interested parties have submitted as follows regard to product under consideration and like article:
  - i. Automotive grade should be excluded from scope as in previous investigations since the applicant has not started commercial production nor carried out the Florida test. Further, the usage for automotive grade is different.
  - ii. The inclusion of a particular product type/grade in PCN does not mean that it cannot be excluded if the Authority finds that the applicant has not commercially produced it in the period of investigation. Reference has been made to Findings of the Authority in High-Speed Steel, Cold Rolled Stainless Steel Sheets, Hot Rolled Flat products of Stainless Steel and CESTAT orders in Indian Refractory Makers Association v. DA, Magnet User Association v. DA and Oxo Alcohol Industries Association v. DA.
  - iii. The Respondents deny the product scope as defined by the Applicant in their written submissions. We have expressed their confusion and requested for clarification on the exclusion of automotive grade

### C.3. Examination by the Authority

7. The product under consideration in the present investigation is "Natural Mica based Pearl Industrial Pigments excluding cosmetic grade".
8. The product under consideration is chemically titanium dioxide coated micaceous and lustrous pearlescent pigment and is commercially known in the marketplace as Titanium Dioxide or Iron Oxide coated Mica Pearl Pigment or Pearl Lustre Pigments or Pearl Pigments. It is extensively used to impart colours and other effects such as certain inorganic pigments/colouring agents giving lustrous/ shining frosted effects, such as pearlescent effects, metallic effects, for coating inks and plastics application.
9. The product is classified under the Chapter 32 of the Customs Tariff Act, 1975 (51 of 1975) under sub heading 3206 11. The Customs classification is, however, indicative only and in no way binding on the scope of the present investigation.
10. The Authority, on the basis of submissions and arguments made by the domestic industry and various other interested parties, issued a letter dated 17<sup>th</sup> July, 2020 inviting comments on the PCN suggested by various interested parties. Subsequently, on examination of the comments received from various interested parties, the Authority finalized the PCN methodology for the present investigation through an order Notification dated 7<sup>th</sup> October, 2020. All interested parties were then requested to submit questionnaire responses on the basis of the finalized PCN methodology within 2 weeks. The finalized PCN methodology shall be applied to assess dumping and material injury being caused to the domestic industry for the products produced during the period of investigation.
11. The Authority has considered the following PCN for the purpose of the present investigation: -

S.No.	Non-Automobile (N)	Particle Size*	Code
1.	Silver- 1	Small (D50<17)- S Regular (D50 between 17-30)- R Large (D50>30)- L Special - X	N1S N1R NIL N1X
	Gold- 2	Small (D50<17)- S Regular (D50 between 17-30)- R Large (D50>30)- L Special - X	N2S N2R N2L N2X
	Iridescent- 3	Small (D50<17)- S Regular (D50 between 17-30)- R Large (D50>30)- L Special - X	N3S N3R N3L N3X
	Earth tones (Bronze/ Copper/ Maroon)- 4	Small (D50<17)- S Regular (D50 between 17-30)- R Large (D50>30)- L Special - X	N4S N4R N4L N4X
	Others- 5	Small (D50<17)- S Regular (D50 between 17-30)- R Large (D50>30)- L Special - X	N5S N5R N5L N5X
Automobile Application (A)			
	Silver- 1	Small (D50<17)- S Regular (D50 between 17-30)- R Large (D50>30)- L Special - X	A1S A1R AIL A1X
	Gold- 2	Small (D50<17)- S Regular (D50 between 17-30)- R Large (D50>30)- L Special - X	A2S A2R A2L A2X
	Iridescent- 3	Small (D50<17)- S Regular (D50 between 17-30)- R Large (D50>30)- L Special - X	A3S A3R A3L A3X
	Earth tones (Bronze/ Copper/ Maroon)- 4	Small (D50<17)- S Regular (D50 between 17-30)- R Large (D50>30)- L Special - X	A4S A4R A4L A4X
	Others- 5	Small (D50<17)- S Regular (D50 between 17-30)- R Large (D50>30)- L Special - X	A5S A5R A5L A5X

\*D50 is the average particle size in the pigment which is being imported e.g. D50<17

denotes that 50% of the particles in the pigment are less than particle size 17

12. As regards argument of exclusion of Automotive grade, the Authority notes that PCN's were finalised after obtaining comments of all interested parties which included Automotive grade of PUC as well. It is further noted that the applicant is producing automotive grade and therefore Authority has not excluded these from the scope of the product under consideration.
13. It is noted from the information available on record that the product produced by the Domestic Industry is like article to the product under consideration imported from subject country. The product produced by the Domestic Industry, and subject goods imported from subject country is comparable in terms of physical & chemical characteristics, manufacturing process & technology, functions and uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers have used and are using the two interchangeably. The Authority holds that the subject goods produced by the Domestic Industry are like article to the product imported from subject country in terms of Rule 2(d) of the AD Rules.

#### **D. SCOPE OF DOMESTIC INDUSTRY & STANDING**

##### **D.1. Submissions of the domestic industry**

14. Following submissions have been made by the domestic industry with regard to the domestic industry and standing:
  - i. The Applicant, M/s. Sudarshan Chemical Industries Limited is the sole producer of the subject goods in India.
  - ii. The Applicant is related to Sudarshan (Shanghai) Trading Company Limited, China. However, the company has not exported the subject goods to India.
  - iii. The Applicant has imported an insignificant amount of subject goods from China PR. The volume of imports is not significant enough to disentitle it from being treated as domestic industry. Reference has been made to Findings in Viscose Staple Fibre, Carbon Black, Acrylic Fibre, 2 Methyl (5) Nitro Imidazole, Phthalic Anhydride and Flax Yarn, wherein the Authority followed the same approach.
  - iv. The Applicant has requested to be treated as eligible domestic industry in the present investigation.
  - v. As regards sales and purchases made by the Chinese subsidiary, the purchases were raw materials for NPUC and not for product under consideration. As regards USA, it is the sales agent of the domestic industry and therefore purchases are nothing but sales returns.
  - vi. With regard to the imports made, 72% comprises of NIS, and the domestic industry suffered financial loss in this PCN during the period of investigation. The petitioner is constrained to imports this PCN as a result of significant dumping and its impact on other products. The petitioner has also suffered significant losses in N1R. These PCNs are produced in low volumes because of significant dumping in the country.
  - vii. The domestic industry does not deny that they have imported the product under consideration. However, the volume of imports is insignificant.

##### **D.2. Submissions by other interested parties**

15. Following submissions have been made by other interested parties with regard to the domestic industry and standing:
  - i. Annual Report 2019-20 of the petitioner states that the Chinese and USA subsidiary sold goods worth 5328.9 lakhs in 2019-20 and 4820.4 lakhs in 2018-19 respectively and made purchases worth 817.3 lakhs in 2019-20 and 2376.8 lakhs in 2018-19.
  - ii. Imports from China by the applicant is significant, and therefore cannot be treated as domestic industry. The details of imports made have not been disclosed.
  - iii. It is difficult to determine sales figures of PUC out of total products manufactured by them as petitioner is a multi-product company, and therefore, the purpose and regularity of imports made needs to be clarified.
  - iv. Domestic industry claimed at the time of oral hearing that 60% of their demand is met by imports.
  - v. Merely mentioning that volume of imports is not significant is not a valid reason for eligibility. Cases referred to in the petition are misplaced as domestic producers in those cases were not regular importers or had imported under duty-free scheme or advance license.

##### **D.3. Examination by the Authority**

16. Rule 2(b) of the Anti-Dumping Rules defines domestic industry as under:

*“(b) ‘domestic industry’ means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term ‘domestic industry’ may be construed as referring to the rest of the producers”.*

17. The application has been filed by M/s. Sudarshan Chemical Industries Limited. The applicant is the sole producer of the subject goods in India. The Authority considered the arguments of the interested parties regarding the imports made by the Applicant and notes that the imports made by the Applicant during the period of investigation, accounts for \*\*\*% of the total demand and \*\*\*% of the total imports into India which is not significant so as to dis entitle the Applicant from being treated as domestic industry.
18. With regard to the purchases made by the Applicant from its subsidiary companies in China and USA, the Authority notes that the imports from Chinese subsidiary is of NPUC and imports from USA subsidiary is sales returns.
19. Considering the information on record, the Authority holds that the production of the applicant account for a major proportion in the domestic production of the like article and the applicant is eligible domestic industry within the meaning of Rule 2(b) of the Rules. The application satisfies the criteria of standing in terms of Rule 5(3) of the Rules.

## **E. CONFIDENTIALITY**

### **E.1. Submissions of domestic industry**

20. Following submissions have been made by the domestic industry regarding confidentiality.
  - i. Hebei Oxen New Material Company Limited has not circulated the non-confidential version of the response within the time limits prescribed by the Authority and despite pointing out during the hearing the said exporter circulated the questionnaire response for the first time with its written submissions. The rights of the domestic industry have been seriously impeded as sufficient time has not been provided to offer comments on the response. Reference was made to the WTO Panel decisions in US – Hot Rolled Steel and US-Corrosion-Resistant Steel Sunset review, wherein the Panel stressed on the importance of providing timely opportunities to interested parties to protect their legitimate interests.
  - ii. The entire submission made by the company deserves to be ignored on the account that the non-confidential version was filed after more than ten months from initiation of present investigation. Reference has been made to the decision of the Authority in Ceramic Tiles wherein the Authority did not accept the response of the interested party as it was received after considerable lapse of permitted time.
  - iii. Exporters and importers have claimed excessive confidentiality and failed to provide a reasonable summary of the information claimed confidential.
  - iv. No adequate reasoning has been provided for the information claimed confidential, thereby violating principles of natural justice.
  - v. A majority of questions in the questionnaire issued by the Authority has been removed from the response filed by Kuncai International (India) Private limited, thereby resulting in a blatant violation of the procedure and practice followed by the Authority.
  - vi. Accepting such responses will set a precedence to other interested parties to not follow established procedure and easily get away with the obligations set out under the rules.
  - vii. As regards non-confidential version, the petition filed is as per requirements of Trade Notice 10/2018.
  - viii. As regards cost information, it is business proprietary information not amenable to summarization. The exporters themselves have claimed costing information confidential. Standards of confidentiality apply for all parties in an investigation. Reference has been made to Anwar Jute Spinning Mills Limited case and CESTAT order in Nitro Chemical Industry Limited v. Designated Authority.
  - ix. As regards circulation of non-confidential version, the second list of interested parties wherein the exporters names were provided was uploaded on 29<sup>th</sup> January 2021 and the non-confidential version was circulated accordingly. The exporters did not circulate the non-confidential version of the responses despite being aware of the petitioner since initiation or when the first list of interested parties was uploaded on 22<sup>nd</sup> May 2020.
  - x. The updated injury information considering complete import information of POI was provided by the domestic industry on 22<sup>nd</sup> February 2021.

**E.2. Submissions by other interested parties**

21. Following submissions have been made by other interested parties regarding confidentiality:

- i. The non-confidential version of the petition does not meet the requirements under Rule 7 of the Rules and Trade Notice 10/2018. Excessive confidentiality has been claimed without providing sufficient justification.
- ii. The petitioners have not provided any cost information in the non-confidential version.
- iii. The applicant provided non-confidential version of injury information only on 5<sup>th</sup> February 2021, post a delay of 273 days from date of initiation.
- iv. The applicant has provided injury information based on extrapolated import data of April 2019 to Feb 2019 and has not provided the non-confidential version of the injury information considering complete import information of POI.
- v. The respondents have submitted their responses as per the questionnaire format prescribed by the Authority for the producers / exporters, including the confidentiality statement, and also completely adhered to the Trade Notice No 10/2018 dated 7<sup>th</sup> September 2018. The data of the Respondents have been filed as prescribed, and the same is open for verification by the Authority, as considered necessary and feasible, for the purposes of this investigation.
- vi. The importers have filed the required questionnaire responses duly and completely. The confidentiality claimed by the Respondents is in accordance with the law and as permitted by the Trade Notice 10/2018 on account of business sensitive information.

**E.3. Examination by the Authority**

22. With regard to confidentiality of information, Rule 7 of the Rules provide as follows:

*“Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule(2) of rule 12, sub-rule(4) of rule 15 and sub-rule*

*(3) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.*

*(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.*

*Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.”*

23. The Authority examined the confidentiality claims of the interested parties and on being satisfied allowed the claim on confidentiality. The Authority considers that any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, should be treated as such by the authority. Such information cannot be disclosed without specific permission of the party submitting it.
24. The Authority has considered the claims of confidentiality made by the Applicants and the opposing interested parties and on being satisfied about the same, the Authority has allowed the claim on confidentiality. The Authority made available to all interested parties the public file containing non-confidential version of evidence submitted by various interested parties for inspection, upon request as per Rule 6(7).
25. As regards the argument of alleged delay in circulation of non-confidential version submissions of the domestic industry and M/s Hebei Oxen New Material Company Limited, it is noted that in view of COVID-19 pandemic, since it is not possible to maintain a public file for easy access by all interested parties, the Authority circulated a list of interested parties on 22.05.2020 which was subsequently revised on 29<sup>th</sup> January 2021 and all the interested parties including responding exporters and domestic industry circulated the submissions thereafter.



**F. MISCELLANEOUS****F.1. Submissions of domestic industry**

26. Following submissions have been made by the domestic industry regarding miscellaneous submissions.
- i. Zhejiang Coloray Technology Development Company has only filed authorization letter. Any response at a belated stage should not be accepted.
  - ii. The sunset review application was withdrawn earlier since the domestic industry was not suffering injury from imports from European Union and USA, thereby establishing that trade remedial measures are not being used excessively against all sources.
  - iii. As regards frequent usage of trade remedial measures, the previous SSR concluded in 2010, 10 years prior to present investigation, and the domestic industry has not applied for any trade remedial measures since 2010 until the present investigation.
  - iv. As regards evidence presented in the petition, all the requirements under Rule 5 have been adequately met. Petition has limited purpose of providing prima facie evidence to justify initiation of investigation. The rules do not require the Authority to have full information at the initiation stage itself. Further, the respondents have omitted to quote the finding of the Panel in Mexico-Steel Pipes and Tubes on the issue.
  - v. Imposition of anti-dumping duties will not restrict imports, but will only remove unfair advantages, prevent decline in performance of the domestic industry and help maintain availability of wider choice of subject goods. Imports from China PR can still enter the Indian market at un-dumped prices. Further, there are imports from other countries as well.
  - vi. No company is willing to suffer losses, and the domestic industry is not suffering losses. The dumped imports are forcing the domestic industry to reduce its price despite increase in costs.

**F.2. Submissions by other interested parties**

27. Following submissions have been made by other interested parties regarding miscellaneous submissions.
- i. The domestic industry has been making use of anti-dumping duties imposed on the product under consideration since 2003 from almost all sources of imports.
  - ii. The sunset review previously applied was withdrawn by the petitioner, as product under consideration was not being exported at dumped prices.
  - iii. The evidence presented in the petition is largely based on estimates and assumptions and do not qualify as sufficient evidence. Reference has been made to WTO Panel decisions in US-Softwood Lumber, Guatemala – Cement I and Mexico-Steel Pipes and Tubes in this regard.
  - iv. The petitioner is the sole producer in India for the product under consideration and imposition of duty will result in undue advantage and create a monopoly, thereby affecting downstream industries. There exists a huge demand-supply gap.
  - v. The petitioners are willing to make a loss and force their competitors to comply with the same knowing that they have the largest offers and will outlast the competition in the long run.
  - vi. India is the major supplier of the key raw material i.e., Natural Mica to China. Therefore, it is submitted that the imposition of anti-dumping duties will adversely impact the Indian exports of Natural Mica to China.

**F.3. Examination by the Authority**

28. With regard to the contention that the applicant is trying to monopolize the market and that the anti-dumping duty will impact downstream industry, the Authority notes that imposition of anti-dumping duty does not restrict imports. Anti-dumping duty ensures that the imports are entering the Indian market at fair prices and a level playing field is maintained between the foreign exporters and the domestic industry.
29. As regards the existence of demand-supply gap, the Authority notes that possible demand-supply gap cannot deprive a domestic industry from seeking redressal against dumped imports causing injury. If the exporters wish to meet the requirement in Indian market that could be done by meeting the requirements at an undumped price.
30. As regards the submission that the petition does not have prima facie evidence to justify initiation, the Authority notes that the Application contained sufficient prima facie information relevant for the purpose of initiation of investigation. The Authority, only after satisfaction that application contained sufficient prima facie evidence to justify initiation of investigation decided to initiate the present investigation.

31. As regards alleged misuse of trade remedial measures, the Authority notes that the recommendation for imposition of duty is made only when the requisite legal requirements are met.

## **G. MARKET ECONOMY TREATMENT, NORMAL VALUE, EXPORT PRICE AND DETERMINATION OF DUMPING MARGIN**

### **G.1. Submissions of domestic industry**

32. Following submissions have been made by the domestic industry regarding normal value, export price and dumping margin.
- i. The exporters from China PR are required to establish that they are operating under market economy conditions, in failure of which their costs and prices should not be considered.
  - ii. The exporters are also required to demonstrate that their costs and domestic prices are appropriate and reasonably reflect the cost and price of subject goods.
  - iii. Normal Value should be determined on the basis of Para (7) of Annexure – I of the Anti-Dumping Rules as none of the producers/exporters have claimed market economy treatment.
  - iv. Europe is an appropriate surrogate country for China PR as the GDP is comparable, Europe is a major producer of the product under consideration and has capacities comparable to China. The petitioner company has a related trader in Europe due to which the information on price prevailing in Europe is available.
  - v. Highest duty should be applied against those exporters who have not co-operated in the present investigation.
  - vi. The dumping margin is positive and substantial.
  - vii. China PR has been considered as non-market economy by the Authority in all recent investigations.
  - viii. India has not acted inconsistently with the provisions of “*pacta sunt servanda*”. China is not being treated as a non-market economy merely based on domestic regulations, but also on the basis of Article 15(a)(i) of China’s Accession Protocol which continues to operate even after 11<sup>th</sup> December 2016. China has failed to fulfill its obligations under the Accession Protocol and failed to remove distortions, to allow prices to be set by the market, as a result of which even other WTO members, including USA and European Union, have continued to treat China as a non-market economy.
  - ix. Para(7) of Annexure I of the Anti-Dumping rules provide for a hierarchy of options available for determination of normal value.
  - x. As regards raw material cost and raw material and utilities consumption ratio, normal value should not be based on any normation – whether for raw materials or for conversion costs. There are no inefficiencies within the domestic industry in utilising inputs or facilities. There should be no presumption that domestic industry is inefficient or the foreign producers are efficient. Any such presumption is against bonafide interests of the domestic industry and is without any factual basis.
  - xi. As regards export price, the responses filed by exporters are grossly insufficient and therefore it should be calculated on the basis of facts available.

### **G.2. Submissions by other interested parties**

33. Following submissions have been made by other interested parties regarding normal value, export price and dumping margin.
- i. The surrogate country methodology should not be used in calculating the normal value for this case, regardless of whether China is treated as a market economy country. India has no basis for calculating normal value using the non-market economy methodology.
  - ii. India is bound by ‘*pacta sunt servanda*’ and must fulfill its obligations under relevant agreements and recognize China’s full market economy status, by amending relevant domestic regulations.
  - iii. In the initiation notification, EU has been considered for normal value determination for China but in the revised petition, USA has been considered.
  - iv. European Union is not an appropriate surrogate country as it is developed country while China is developing. GDP per capita of EU is 13 times more than China and cost of living is 9 times higher in EU than China.
  - v. Raw material cost should be considered as per import price of raw material in China, taken from World Trade Atlas, Raw Material consumption Ratio & Utilities consumption ratio based on best utilization ratio

during the period of injury and optimized cost as considered for NIP as applicant is a new entrant and exporters should suffer due to its inefficiency.

- vi. The actual information of the exporters should be considered for export price as the applicant has claimed baseless adjustments for ocean freight, marine insurance, port expenses, commission, bank charges and inland freight.

### G.3. Examination by the Authority

34. Under section 9A (1) (c), normal value in relation to an article means:

- i. *The comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6), or*
- ii. *When there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:*
  - a. *comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*
  - b. *the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6);*

35. The Authority sent questionnaires to the known producers/exporters from the subject country, advising them to provide information in the form and manner prescribed by the Authority. The following producers/exporters have co-operated in this investigation by filing the prescribed questionnaire responses:

- i. M/s. Nanyang Lingbao Pearl Pigment Company Limited Materials
- ii. M/s. Rika Technology Company Limited
- iii. M/s. Guangxi Chesir Pearl Material Company Limited
- iv. Zhejiang Ruicheng New Material Company Limited
- v. Jiangsu Pritty New Material Company Limited
- vi. Fujian Kuncai Material Technology Company Limited

36. However, Jiangsu Pritty New Material Company Limited did not submit verification documents as prescribed by the Authority. Therefore, the Authority has rejected the questionnaire response filed by Jiangsu Pritty New Material Company Limited.

#### Market Economy Status for Chinese Producers

37. Article 15 of China's Accession Protocol in WTO provides as follows:

"Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

*"(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:*

*(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*

*(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*

(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.

(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.

(d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the nonmarket economy provisions of subparagraph (a) shall no longer apply to that industry or sector."

38. It is noted that while the provision contained in Article 15 (a)(ii) have expired on 11.12.2016, the provision under Article 2.2.1.1 of WTO read with obligation under 15 (a)(i) of the Accession Protocol require criterion stipulated in para 8 of the Annexure I of the Rules to be satisfied through the information/data to be provided in the supplementary questionnaire on claiming the market economy status. It is noted that since the responding producers/ exporters from China PR have not submitted response to the supplementary questionnaire in the form and manner prescribed, the normal value computation is required to be done as per provisions of para 7 of Annexure I of the Rules.
39. Accordingly, the normal value for all the producers/exporters from the subject country have been determined in accordance with para 7 of Annexure I of the Rules which reads as under.  
*In case of imports from non-market economy countries, normal value shall be determined on the basis if the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.*
40. The Authority notes that Normal Value for a country considered as a non-market economy is required to be computed in accordance with para 7 and 8 of Annexure 1 of AD rules. In the instant case, the responding exporters have not filed any MET questionnaire and therefore the Authority notes that options under para 7 of Annexure 1 to AD rules need to be explored.
41. Para 7 lays down hierarchy for determination of normal value and provides that normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including India, or where it is not possible, on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. Thus, the Authority notes that the normal value is required to be determined having regard to the various sequential alternatives provided under Annexure 7.
42. The domestic industry has proposed European Union as the "surrogate country" for China PR and proposed to consider resale price of goods exported by them to its related trader in EU as normal value for China PR. The opposing interested parties has argued that European Union is not an appropriate surrogate country as it is developed country while China is developing. GDP per capita of EU is 13 times more than China and cost of living is 9 times higher in EU than China.
43. The Authority has taken note of the arguments of various interested parties and notes that there is no sufficient information provided by any Interested Party to consider application of the first proviso of para 7 nor any information is available with the Authority for the same.

44. As regards the next proviso in para 7, the Authority notes that information on import volume and prices of subject goods from countries other than China during POI is available from the DGCIS data. It is noted that while China accounts for 92% of total imports of subject goods during POI, the next highest quantity of imports are from USA constituting a share of 6% at an average CIF of Rs 408/MT. The imports from other countries are less than 1%.
45. USA being a non-subject country with no investigation of AD underway or AD measure in force and with import volume from USA being quite significant, the CIF price is thus representative of price payable in India. However, on making a PCN wise analysis of imports from USA, it is seen that PCN wise imports from USA are significant for only 2 PCN's – N1S (118.53 MT) and N1R (5 MT). For all the remaining 11 PCN imported from USA during the POI, the volume is insignificant for appropriate comparison.
46. The Authority also notes that the TradeMap data of PUC exports to other countries does not has details about the PCNs prescribed by the Authority. Also, the PUC does not have a dedicated HSN Code. Therefore, in absence of sufficient information on export of PUC to other country, the Authority cannot adopt option 2 of para 7 heirarchy even if a surrogate country based on level of development is considered.
47. The Authority, therefore, has considered the constructed normal value on the basis of Indian COP with appropriate modifications as the price actually paid or payable in India for the like product, duly adjusted to include a reasonable profit margin.

#### **G.5.1 Determination of export price**

#### **G.5.1 Determination of export price for co-operating producers/exporters from China PR**

48. The Authority has computed the export price at PCN level for an apple-to-apple comparison with CNV for computation of PCN wise Dumping Margin which has later been converted to weighted average level. Similarly, the landed value has been computed and compared with NIP at PCN level so as to obtain Injury Margin at PCN level and later collapsed at weighted average level. Wherever equivalent PCN of imported PCN is not produced by DI, the nearest appropriate PCN with relevant adjustments has been considered to ensure apple to apple comparison.

#### **M/s. Nanyang Lingbao Pearl Pigment Company Limited Materials**

49. Nanyang Lingbao Pearl Pigment Co., Ltd Materials has directly exported \*\*\* MT subject goods to unrelated customers in India of an invoice value of US\$ \*\*\*. After allowing the adjustment on account of ocean freight, insurance, inland transportation, insurance, port and other related expenses etc., the weighted average ex-factory export price and weighted average landed value comes to \*\*\* US\$ / MT and \*\*\* US\$ / MT respectively.

#### **M/s. Rika Technology Company Limited**

50. RIKA Technology Co., Ltd has directly exported \*\*\* MT subject goods to unrelated customers in India of an invoice value of US\$ \*\*\*. After allowing the adjustment on account of ocean freight, insurance, inland transportation, insurance, port and other related expenses, bank charges etc., the weighted average ex-factory export price and weighted average landed value comes to \*\*\* US\$ / MT and \*\*\* US\$ / MT respectively.

#### **M/s. Guangxi Chesir Pearl Material Company Limited**

51. Guangxi Chesir Pearl Material Co., Ltd. has directly exported \*\*\* MT subject goods to unrelated customers in India of an invoice value of US\$ \*\*\*. After allowing the adjustment on account of ocean freight, insurance, inland transportation, port and other related expenses etc., the weighted average ex-factory export price and weighted average landed value comes to \*\*\* US\$ / MT and \*\*\* US\$ / MT respectively.

#### **M/s. Zhejiang Ruicheng New Material Company Limited**

52. Zhejiang Ruicheng New Materials Co., Ltd. has directly exported \*\*\* MT subject goods to unrelated customers in India of an invoice value of US\$ \*\*\*. After allowing the adjustment on account of ocean freight, insurance, inland transportation, insurance, port and other related expenses, bank charges etc., the weighted average ex-factory export price and weighted average landed value comes to \*\*\* US\$ / MT and \*\*\* US\$ / MT respectively.

#### **M/s. Fujian Kuncai Material Technology Company Limited**

53. Fujian Kuncai Material Technology Co., Ltd. has directly exported \*\*\* MT subject goods to both unrelated and related customers in India of an invoice value of US\$ \*\*\*. The related importer has cooperated with the investigation. To ensure that the related transactions are at arms-length, from the response filed by the related importer, it is seen that the sales made by the importer shows profit. Accordingly, after allowing the adjustment on account of ocean freight, insurance, inland transportation, insurance, port and other related

expenses, bank charges etc., the weighted average ex-factory export price and weighted average landed value comes to \*\*\* US\$ / MT and \*\*\* US\$ / MT respectively.

**M/s Hebei Oxen New Materials Co. Ltd.**

54. Hebei Oxen New Materials Co., Ltd. has directly exported \*\*\* MT subject goods to unrelated customers in India of an invoice value of US\$ \*\*\*. After allowing the adjustment on account of ocean freight, insurance, inland transportation, insurance, port and other related expenses, bank charges etc., the weighted average ex-factory export price and weighted average landed value comes to \*\*\* US\$ / MT and \*\*\* US\$ / MT respectively

**G.5.2 Determination of export price for non - cooperating producers/exporters from China PR**

55. Export price in respect of any other exporters from China PR has been determined as per facts available in terms of Rule 6(8) of the Rules. Export price for all exporters from China PR has been determined based on imports reported in the DGCI&S, after due adjustments. Accordingly, the export price determined is provided in the dumping margin table below.

**G.6. Determination of dumping margin**

56. Considering the normal value and export price as above, the dumping margins for cooperative producers/exporters of the subject goods from the subject country is determined below. It is seen that the dumping margin is positive and significant.

Producer	Normal Value	Net Export Price	Dumping Margin	Dumping Margin	Dumping Margin Range
	US\$/MT	(US\$/MT)	(US\$/MT)	(%)	(Range)
Nanyang Lingbao Pearl Pigment Company Limited Materials	***	***	***	***	50-60
Rika Technology Company Limited	***	***	***	***	50-60
Guangxi Chesir Pearl Material Company Limited	***	***	***	***	70-80
Zhejiang Ruicheng New Material Company Limited	***	***	***	***	80-90
Fujian Kuncal Material Technology Company Limited	***	***	***	***	0-10
Hebei Oxen New Materials Co., Ltd.	***	***	***	***	60-70
All other producers/exporters from China PR	***	***	***	***	200-300

**H. EXAMINATION OF INJURY AND CAUSAL LINK**

**H.1. Submissions of domestic industry**

57. The following submissions have been made by the domestic industry with regard to injury and causal link:
- Demand for the subject goods increased in the injury period and in the period of investigation.
  - Imports substantially increased in absolute terms and in relation to production and consumption in India throughout the injury period and period of investigation.
  - Market share in demand of the subject country increased, while that of the domestic industry declined. Dumped imports have taken away the share of domestic industry in demand. Imports constitutes 59% of total imports into the country.
  - Imports are undercutting, suppressing and depressing the prices of the domestic industry. Injury margin and

dumping margin are positive and substantial. Imports have continued to enter Indian market at dumped prices in the post period of the investigation period.

- v. Capacity increased in 2017-18 and remained constant thereafter. Production, domestic sales and capacity utilization improved in 2017-18 but declined in 2018-19 and period of investigation.
- vi. Inventories declined in 2017-18 but increased continuously thereafter, as a result of dumped imports. The closing stock in the period of investigation was at the highest level.
- vii. Profitability, cash profits, PBIT and ROI increased till 2018-19 and declined significantly in the period of investigation. Growth is negative in almost all volume and price parameters. The decline is directly a result of dumped imports.
- viii. There is a threat of material injury, in the event of non-imposition of anti-dumping duty, as a result of significant increase in volume of imports, surplus capacities with producers in subject country, significant price undercutting, price suppression and depression.
- ix. The responses filed by the exporters reveal threat of material injury to the domestic industry.
- x. Price undercutting has lead to decline in selling prices of the domestic industry, while price suppression and depression has resulted in significant erosion in profitability.
- xi. Operations were suspended due to COVID -19 only for five days. The domestic industry is required to be seen as it is and not in idle conditions.
- xii. High consumption in India may justify imports inter se but does not justify dumping. The domestic industry is forced to set its prices considering Chinese import price offers. The domestic industry has suffered adverse volume effect in a situation of demand-supply gap and significant price injury. Reference has been made to DSM Idemitsu Limited v. DA wherein it was held the exporters can supply goods to meet requirement at a price equivalent to normal value but not at a dumped value to capture the market.
- xiii. Exports of the domestic industry constitute only 13% of the total sales.
- xiv. The respondent compared weighted average import prices with domestic industry prices. The domestic industry has provided PCN wise cost, price and import data for period of investigation for determining price undercutting. Import price is not required to be compared with the cost/price of domestic industry.
- xv. Annual reports refer to all kinds of pigments produced by the domestic industry. Reference has been made by the interested parties without establishing its relevance. Public statements in the Annual Report do not alter the conclusion that dumping of the product under conclusion has contributed to injury of the domestic industry, and do not provide guidance as to deterioration in performance over injury period of an anti-dumping case.
- xvi. The non-injurious price may be determined as per Annexure III.

## **H.2. Submissions by other interested parties**

58. The following submissions have been made by other interested parties with regard to injury and causal link:

- i. Annual report shows that the company suspended operations, which was not disclosed in the petition. Injury is as a result of suspension and not as a result of subject imports.
- ii. Economic parameters of the domestic industry show positive trend during injury period but declined in period of investigation, thereby raising concerns as to its legitimacy. The Annual Report of the petitioner and the data provided are contradictory.
- iii. The import price from China increased by 15 percent during POI to fulfill demand-supply gap that petitioner is unable to fulfil by not utilizing its 100 percent capacity.
- iv. Number of crucial issues impacting the domestic industry have been left unaddressed, and all other known factors causing injury should be examined.
- v. Applicant has a strong export orientation as a result of which they are unable to supply in the domestic market despite enormous demand.
- vi. The applicant has provided wrong and misleading information to prove non-existent injury. There is no correlation between import price and domestic selling price of the applicant.
- vii. The claim of the domestic industry regarding causal link has been made on the basis of weighted average, and therefore, the respondents' methodology cannot be questioned. If such methodology was questionable, the domestic industry should have provided the information on a PCN-to-PCN basis.
- viii. Domestic industry has achieved highest ever sales in January and February 2020 and recorded significant

growth of 19%. There is no causal link and injury.

- ix. Expenses such as Exception Items, Advertisement, Provision for credit loss, Commission to selling agents, Travelling/Conveyance, Corporate Social Responsibility should not be considered for determination of NIP and NV in terms of Para 4(iv) and (vii) of Annexure III of Anti-dumping Rules.
- x. Applicant has not faced any material injury, and hence, the claim is denied
- xi. The assessment parameters are clearly laid down and are well-settled to determine threat of material injury in an anti-dumping investigation. Moreover, the Applicant made absurd claims on the basis of the information provided by the Respondents, which is not in accordance with paragraph (vii) Annexure II of the Anti-dumping Rules
- xii. The Authority is requested to examine the threat of material injury on the basis of the information supplied by the Respondents.
- xiii. There is no correlation between the import price and domestic selling price of the applicant. It is submitted that import price per unit declined from 115 (Index) in FY 2018-19 to 114 (Index) during the POI. However, the domestic selling price per unit of the applicant declined from 108 (Index) to 99 (Index) during the POI. The respondents fail to understand how the decline in the import price by 1 index point can lead to a decline in the domestic selling price by 9 index points.

### H.3. Examination by the Authority

59. The submissions made by the domestic industry with regard to the injury and causal link related issues have been examined. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the interested parties.
60. Rule 11 of the Rules, read with Annexure II, provides that an injury determination shall involve examination of factors that may indicate injury to the Domestic Industry, "... taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...". In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the Domestic Industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Anti-Dumping Rules.
61. As regards argument of NIP calculations, the same is calculated on the bases of Annexure III of the AD Rules.
62. As regards the arguments concerning statements in annual report, the Authority reiterates that the injury to the domestic industry has been determined by considering the performance of the domestic industry for the product under consideration and whereas the annual reports provides for performance of the domestic industry for its entire product range.
63. As regards argument that domestic industry is export oriented, it is noted that exports of domestic industry constitute 13% of the total sales of the product concerned which implies that the focus of the domestic industry is Indian market.
64. The Authority has examined the injury parameters taking into account the facts and submissions made by the domestic industry as under:

#### H.3.1. Volume Effect of Dumped imports on the domestic industry

##### a. Assessment of Demand/Apparent Consumption

65. The Authority has taken into consideration, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the Indian Producers and imports from all sources.

Particulars	Unit	2016-17	2017-18	2018-19	POI
Sales of Domestic Industry	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	103	92	86
Sales of Other Indian Producers	MT	-	-	-	-
Subject Country - China	MT	1154	1568	1841	2003



Imports from other countries	MT	238	230	231	178
Total Demand in India	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	116	121	122

66. It is seen that the demand for subject goods has increased throughout the injury period and the period of investigation. However, the sale of domestic industry and imports of other countries declined during POI. On the other hand, the imports from subject country increased significantly during POI.

**b. Import Volumes from the subject country**

67. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. For the purpose of injury analysis, the Authority has relied on the transaction wise import data procured from DGCI&S.

Particulars	Units	2016-17	2017-18	2018-19	POI
Subject Country – China PR	MT	1,154	1,568	1,841	2,003
Other Countries	MT	238	230	231	178
Total import volume	MT	1,392	1,798	2,072	2,181
Subject country Imports in relation to					
Production - Indian Industry	%	***	***	***	***
Trend	Indexed	100	124	163	191
Consumption	%	***	***	***	***
Trend	Indexed	100	117	132	142
Total Imports	%	82.91	87.21	88.87	91.83

68. It is seen that:

- Imports from subject country increased throughout the injury period and period of investigation.
- Imports from subject country in relation to total production and consumption has also increased throughout the injury period and period of investigation.
- Imports from subject country constitute 92% of the total imports in the country during the period of investigation.

**H.3.2. Price effect of the Dumped Imports on the domestic industry**

69. With regard to the effect of the dumped imports on prices, it is required to be analyzed whether there has been a significant price undercutting by the alleged dumped imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in the normal course. The impact on the prices of the domestic industry on account of the dumped imports from subject country has been examined with reference to price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis, the cost of production, net sales realization (NSR) and the non-injurious price (NIP) of the domestic industry have been compared with landed price of imports of the subject goods from the subject country.

**a. Price undercutting**

70. In order to determine, whether the imports are undercutting the prices of the domestic industry in the market, the price undercutting has been worked out by comparing the landed price of imports with the selling price of the domestic industry during the injury period. The price undercutting has been determined for the POI separately for each PCN produced by the domestic industry and thereafter for the product under consideration as a whole. Summarized position for the same is given in the table below

Particulars	Unit	China PR			
		2016-17	2017-18	2018-19	POI
Landed price of imports	Rs./Kg	330	326	380	380
Net sales realization	Rs./Kg	***	***	***	***
Price undercutting	Rs./Kg	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting	% Range	40-50%	50-60%	30-40%	20-30%

71. It is seen that the landed price of imports from the subject country is below the net sales realization of the domestic industry, thereby resulting in positive price undercutting.

**b. Price suppression and depression**

72. In order to determine whether the dumped imports are depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred in normal course, the changes in the costs and prices over the injury period were examined.

Particulars	Unit	2016-17	2017-18	2018-19	POI
Cost of Sales	₹/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	104	103	104
Selling Price	₹/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	105	108	100
Landed price of imports	Rs./Kg	330	326	380	380
<i>Trend</i>	<i>Indexed</i>	100	99	115	115

73. Comparison of cost of production, selling price of the domestic industry and landed price of imports shows that landed price of subject imports is below the cost of production and selling price of the domestic industry throughout the injury period including period of investigation. Further, whereas the costs of the domestic industry increased during the POI, however, instead of raising the selling prices in proportion with the increase the costs, the Domestic Industry was forced to reduce the selling price due to high volume of imports in the country at lower prices. The imports are suppressing and depressing the prices of the Domestic Industry.

**H.1. Economic Parameters of the domestic industry**

74. Annexure II to the Rules provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. The various injury parameters relating to the domestic industry are discussed below.

75. The Authority has examined the injury parameters objectively taking into account various facts and arguments made by the interested parties in their submissions.

**a. Production, capacity, capacity utilization and sales**

76. The capacity, production, sales, and capacity utilization of the domestic industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Capacity	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	103	103	103
Production	MT	***	***	***	***

<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>109</i>	<i>98</i>	<i>91</i>
Capacity Utilization	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>106</i>	<i>95</i>	<i>89</i>
Domestic Sales	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>103</i>	<i>92</i>	<i>86</i>

77. It is seen that:

- The capacity of the domestic industry increased in 2017-18 and remained constant thereafter.
- The production, and domestic sales increased in 2017-18, but declined in 2018-19 and further in the period of investigation.
- Capacity utilization increased in 2017-18 but declined in 2018-19 and further in the period of investigation.

**b. Market Share**

78. Market share of the domestic industry and imports over the period is as follows:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Domestic Industry	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>88</i>	<i>76</i>	<i>71</i>
Subject Country – China PR	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>117</i>	<i>132</i>	<i>142</i>
Share of Other Countries	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>83</i>	<i>80</i>	<i>61</i>
<i>Total Share in Demand</i>	%	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>

79. It is seen that the market share of the subject country increased throughout the injury period and in the period of investigation. However, the market share of the domestic industry declined throughout the injury period and in the period of investigation. The imports from the subject country account for 60% share in the Indian market.

**c. Inventories**

80. Inventory position with the domestic industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Average Stocks	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>82</i>	<i>112</i>	<i>159</i>

81. It is seen that the average inventories with the domestic industry have increased throughout the injury period and substantially in the period of investigation.

**d. Profitability, return on investment and cash profits**

82. Profitability, return on investment and cash profits of the domestic industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Cost of Sales	₹/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>104</i>	<i>103</i>	<i>104</i>
Selling Price	₹/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>105</i>	<i>108</i>	<i>100</i>

Profit/Loss per unit	₹/Kg	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>138</i>	<i>226</i>	<i>14</i>
Profit/Loss	₹ Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>142</i>	<i>208</i>	<i>12</i>
Cash Profit	Rs Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>115</i>	<i>138</i>	<i>66</i>
Return on Capital Employed	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>114</i>	<i>136</i>	<i>19</i>

83. It is seen that:

- The profitability of the domestic industry increased till 2018-19 but declined significantly during period of investigation.
- The return on investments has increased till 2018-19 but declined significantly thereafter.

**e. Employment, wages and productivity**

84. Employment, wages and productivity of the domestic industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Wages	₹ Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>112</i>	<i>144</i>	<i>181</i>
Employees	Nos	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>109</i>	<i>122</i>	<i>111</i>
Productivity per Employee	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>100</i>	<i>81</i>	<i>81</i>
Productivity per day	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>125</i>	<i>100</i>	<i>100</i>

85. It is seen that:

- The wages paid and number of employees increased from 2016-17 to POI.
- The productivity per day has remained almost the same.

86. The domestic industry has submitted that these parameters are not reflective of the impact of dumped imports on the domestic industry.

**f. Growth**

87. The growth of the domestic industry in terms of production, sales, profitability, cash profits PBIT, ROI and inventories is as per table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI
Capacity	MT	-	3	3	3
Production	MT	-	9	0	(3)
Capacity Utilization	MT	-	6	(3)	(6)
Domestic Sales	MT	-	3	(6)	(9)
Average Stocks	MT	-	(18)	18	68
Profit/Loss -Domestic	₹/Lacs	-	40	97	(79)

Cash Profit	Rs Lacs	-	14	35	(30)
Return on Capital Employed	%	-	14	41	(75)

88. It is seen that the growth is negative in the period of investigation in almost all volume and price parameters. Production, sales, inventories, profitability, cash profits, PBIT and ROCE have all shown a negative growth in the period of investigation.

**g. Magnitude of Dumping Margin**

89. It is noted that the subject goods are being dumped into India and the dumping margin is positive and significant.

**h. Ability to raise capital investment**

90. It is seen that the domestic industry has enhanced capacity for the subject goods over the period, making capital investment. However, despite increase in demand, the capacities are lying underutilized which is an impact of subject imports. This has impacted the ability of the applicants to raise its capital.

**i. Factors affecting domestic prices**

91. It is seen that the import prices are directly affecting the prices of the domestic industry in the market. The landed value of the subject goods from the subject country are below the cost and selling price of the domestic industry. Further, the domestic industry is unable to retain its prices in the market due to presence of dumped imports in the country. The prices of imports have suppressed and depressed the prices of the domestic industry to a significant degree. The dumped imports are impacting the prices of the domestic industry.

**H.4. THREAT OF MATERIAL INJURY**

92. The domestic industry has claimed threat of material injury on following grounds:

- a) Significant increase of dumped imports into India indicating likelihood of substantially increased importation:

Imports from the subject country have increased significantly over the injury period. Further, imports have remained significant despite enhanced capacities.

Particulars	Units	2016-17	2017-18	2018-19	POI
Subject Country – China PR	MT	1,154	1,568	1,841	2,003

As per the questionnaire response, following producers in the subject country has increased their exports to India. Summarized table is as follows:

Sl. No.	Producer	2017	2018	2019	POI
1.	Hebei Oxen New Materials Co., Ltd.	100	103	166	148
2.	Guangxi Chesir Pearl Material Company Limited	100	2087	1469	2521
3.	Zhejiang Ruicheng New Material Company Limited	100	40	571	1238
4.	Rika Technology Company Limited	100	115	129	134
5.	Nanyang Lingbao Pearl Pigment Company Limited Materials	100	82	95	118
6.	Fujian Kuncai Material Technology Company Limited	100	139	138	75

- b. The domestic industry claimed that capacities created by the producers in subject country are more than their domestic demand. These producers are in fact saddled with excess capacity. Further, as per the questionnaire response, following producers have increased their capacities. Summarized table is as follows:

Sl. No.	Producer	2017	2018	2019	POI
1.	Hebei Oxen New Materials Co., Ltd.	100	75	106	98
2.	Guangxi Chesir Pearl Material Company Limited	100	120	130	130
3.	Zhejiang Ruicheng New Material Company Limited	100	113	113	113
4.	Fujian Kuncai Material Technology Company Limited	100	123	140	147

The domestic industry has submitted that sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicates the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports.

- c. The imports from subject country are significantly undercutting the prices of the domestic industry. The landed price of imports from subject country is below the cost of the domestic industry. The imports are suppressing and depressing the prices of the domestic industry.

Inventories maintained by subject country exporters.

- d. The following exporters in the subject country have increased their inventories, as per the questionnaire response filed by the exporters. Summarized table is as follows:

Sl. No.	Producer	2017	2018	2019	POI
1.	Guangxi Chesir Pearl Material Company Limited	100	167	206	211
2.	Zhejiang Ruicheng New Material Company Limited	100	154	163	122
3.	Nanyang Lingbao Pearl Pigment Company Limited Materials	100	106	113	106
4.	Fujian Kuncai Material Technology Company Limited	100	117	118	130

## H.5. OVERALL ASSESSMENT OF INJURY

93. The examination of imports of the product under consideration and the performance of the domestic industry clearly shows that the volume of dumped imports from the subject country has increased in both absolute and relative terms. The imports are undercutting the prices of the domestic industry. The import prices are also suppressing and depressing the prices of the domestic industry. The production, sales, capacity utilization of the domestic industry has declined in the period of investigation. The market share of subject imports has increased while the market share of the domestic industry declined. Profitability, cash profits, PBIT and ROCE has declined in the period of investigation. Growth is negative in almost all volume and price parameters in the period of investigation. In view of the foregoing, the Authority, thus, concludes that the domestic industry has suffered material injury. Analysis of questionnaire response and the information provided by the domestic industry shows that there is an increase of exports of subject goods to India, the capacities with the exporters and inventories have increased over the injury period. In view of the above, it is concluded that there is a threat of material injury to the domestic industry.

## H.6. MAGNITUDE OF INJURY MARGIN

94. The Authority has determined the NIP for the domestic industry on the basis of principles laid down in the Rules read with Annexure III, as amended. The NIP of the PUC has been determined by adopting the verified information/data relating to the cost of production for the POI. The NIP has been considered for comparing the landed price from the subject country for calculating injury margin. For determining the NIP, the best utilisation of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been carried out with the utilities. The best utilisation of production capacity over the injury period has been considered. It is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. average net fixed

assets plus average working capital) for the PUC was allowed as pre-tax profit to arrive at the non-injurious price as prescribed in Annexure III of the Rules and being followed.

95. Based on the landed price and non-injurious price determined as above, the injury margin for producers/exporters has been determined by the Authority and the same is provided in the table below: -

Producer	NIP	Landed Value	Injury Margin	Injury Margin	Injury Margin
	(US\$/MT)	(US\$/MT)	(US\$/MT)	(%)	(Range)
Nanyang Lingbao Pearl Pigments Company Limited Materials	***	***	***	***	40-50
Rika Technology Company Limited	***	***	***	***	40-50
M/s. Guangxi Chesir Pearl Material Company Limited	***	***	***	***	70-80
Zhejiang Ruicheng New Material Company Limited	***	***	***	***	70-80
Fujian Kuncai Material Technology Company Limited	***	***	***	***	0-10
Hebei Oxen New Materials Co., Ltd.	***	***	***	***	60-70
All other producers/exporters from China PR	***	***	***	***	100-200

# I. CAUSAL LINK AND NON-ATTRIBUTION ANALYSIS

96. The Authority examined any known factors other than the dumped imports which at the same time might have been injuring the domestic industry, so that the injury caused by these other factors, if any, is not attributed to the dumped imports.

## a. Volume and prices of imports from third countries

97. The imports from other countries are either at higher prices or at negligible levels.

## b. Contraction of demand and changes in the pattern of consumption

98. It is noted that there is no contraction of demand. On the contrary, overall demand for subject goods has shown improvement over the injury period. Further, there have been no changes in the pattern of consumption which could have caused injury to the domestic industry.

## c. Trade restrictive practices of and competition between the foreign and domestic producers

99. There is no known trade restrictive practice which could have contributed to the injury to the domestic industry.

## d. Conditions of competition and trade restrictive practices

100. The Authority notes that the investigation has not shown that conditions of competition or trade restrictive practices, could have caused injury to the domestic industry.

## e. Developments in technology

101. None of the interested parties has furnished any evidence to demonstrate any change in the technology that could have caused injury to the domestic industry.

## f. Productivity

102. The Authority notes that the productivity of the domestic industry has remained in similar region during the injury period.

## g. Export performance

103. The injury information has been considered separately for domestic and exports, to the extent the same could be segregated.

**h. Performance of other products**

104. The Authority has considered data only in relation to the product under consideration.

**CAUSAL LINK**

105. While other known factors listed under the Rules have not caused injury to the domestic industry, the Authority notes that the following parameters show that injury to the domestic industry is caused by the dumped imports.

- i. There is significant dumping of the subject goods in India.
- ii. Owing to the availability of cheap imports, the volume of dumped imports has increased in absolute as well as relative terms during the period of investigation.
- iii. The market share of the domestic industry has declined while the imports have captured the market share during the period of investigation.
- iv. As a result, the production and sales of the domestic industry increased initially but have declined in the period of investigation.
- v. The capacity utilization of the domestic industry has remained low.
- vi. The imports are undercutting the prices of domestic industry and are priced below the cost of the domestic industry. The imports have suppressed and depressed the prices of the domestic industry.
- vii. Consequently, the domestic industry has decline in profits, cash profits and return on capital employed.
- viii. The volume as well as profitability parameters of the domestic industry have deteriorated during the period of investigation.

**K. Post Disclosure statement submissions****Submission of Domestic Industry**

106. The submissions made by the domestic industry is as follows:

- i. No users or user associations have filed responses, opposed the investigation or the imposition of duties, thereby showing that there will be no significant or adverse impact on them.
- ii. Imposition of duties will arrest decline in the performance of the industry, redress the injury suffered and enable domestic producer to remain viable and competitive.
- iii. A competitive domestic industry capable of supplying the product to the consumers in competition to fair priced imports is in consumer's interests.
- iv. If the current situation continues, the industry will face further injury and eventually be wiped out, giving foreign producers increased leverage, and the consumers will be left at their mercy.
- v. The consumers will have to maintain higher degree of inventory if they have to depend on imported material, while, in case of procurement from the domestic industry, inventory holding can be kept at much lower levels.
- vi. A strong, competitive domestic production of the product is in interest of the public at large.
- vii. The installed capacities of the domestic industry is sufficient to cater to the entire existing demand in India, but has been underutilizing its capacities due to the presence of dumped imports from the subject country.
- viii. Anti-dumping duty will provide a level playing field, address the decline of the domestic industry's performance, and at the same time not have an adverse impact on the eventual end consumers.
- ix. Anti-dumping duty is only a means of price correction and not a protection to the domestic industry.
- x. Impact of duty, on quantification, shows that the impact on consumers is miniscule. Impact of duty on the paint industry would hardly be 1%. The impact on public would be Rs. 500 only in entirety of five years life of a paint due to imposition of anti-dumping duty. The impact of imposition of anti-dumping duty on pigments would be negligible in plastics.
- xi. The domestic industry actively monitors its supply chain of procuring the raw material i.e., mica, and works actively towards reducing the employment of children in the mines. it is in the larger public interest to encourage the growth of such socially responsible domestic industries.
- xii. The domestic industry plans to increase investments, thereby leading to larger employment. The manufacturing plants are environment friendly, and also ensure health and safety of employees.



- xiii. The domestic industry is one among top three manufacturers of product under consideration and exports it globally.
- xiv. Due to widening trade deficit and dwindling forex reserves, it is important to rely more on the domestic production capacities and reduce import dependence.

#### **Submissions of other interested parties**

107. The applicant has regularly imported the subject goods from the respondents namely Guangxi Chesir Pearl Material Co., Ltd, Rika Technology Co Ltd and Fujian Kuncai Material Technology Co. Ltd in significant quantities.
108. From the information provided in the above table, the following facts emerges:
  - a) The applicant is a habitual importer of the subject goods from China as it has imported subject goods from China during the POI, pre-POI period as well as in post POI period.
  - b) The share of the imports made by applicant from China PR during the POI is very significant to the tune of \*\*\*% of the total imports from China PR. The share of the imports made by applicant from China PR during the pre-POI as well as post-POI period in terms of the total imports from China PR is also very significant to the tune of \*\*\*% and \*\*\*% respectively.
  - c) The share of the imports made by applicant during the POI is very significant to the tune of \*\*\*% of the domestic sales of the applicant. The share of the imports made by applicant from China PR during the pre-POI as well as post-POI period in terms of domestic sales of the applicant is also very significant to the tune of \*\*\*% and \*\*\*% respectively.
109. In order to substantiate our claim in this context, following final findings (illustrative) were cited in which domestic producers were considered as ineligible as they were also importing the subject goods from China.
  - a) Aluminium Foil from China PR [F. No.14/06/2015-DGAD dated 10<sup>th</sup> March, 2017];
  - b) Flax Yarn from China PR [F. No. 6/3/2018/DGAD dated 18<sup>th</sup> September, 2018];
  - c) Glazed/Unglazed Porcelain/Vitrified tiles in polished or unpolished finish with less than 3% water absorption”, originating in or exported from China PR [F. No.14/14/2014-DGAD dated 8<sup>th</sup> April, 2017];
  - d) Soda Ash from Turkey and USA [No.6/39/2019 -DGTR 19<sup>th</sup> February, 2021].
110. From the above illustrative findings, the following facts emerge:
  - a) The domestic producer will be considered as ineligible despite insignificant quantities of self-imports in case no plausible reasons for importing the product have been provided.
  - b) Imports between 5%-11% have been considered as significant.
  - c) Share of imports made by the applicant domestic producer should be examined in terms of the total imports into India, imports from subject country(ies), Indian production, production of applicant domestic producer, domestic sales of the applicant domestic producer and Indian demand.
  - d) The sporadic imports made by the domestic producer is not a valid reason to treat as an ineligible domestic industry.
  - e) Imports made under duty free scheme or advance license are not considered to decide the eligibility of a domestic producer as these imports do not come in the main stream.
111. The respondents humbly submit that the applicant fails to meet all the above-mentioned principles as evidenced from the following facts.
112. It is mentioned in the examination of the Authority in para 17 of the disclosure statement that the imports made by the applicant are not significant so as to disentitle the Applicant from being treated as domestic industry. In this context, it is submitted that “insignificant volumes” is not a valid reason to treat a domestic producer as eligible unless plausible reasons for importing the product have been provided. In the instant case, applicant has not provided any plausible reasons for importing the product from China PR. It appears that the Authority has not examined the quantity of the imports made by the applicant *vis-à-vis* other importers from China PR. We have reasons to believe that the applicant happens to be a significant and / or major importer of the PUC. This fact alone would establish that the imports made by the applicant from China PR have a significant impact on the prices in the country and the market dynamics. A mere comparison with the total volume of imports into India or total Indian demand does not have any bearing on the analysis in view of the fact that the Authority is required to carry out the import analysis of the imports made by the applicant.

113. There will be issues of short supply since applicant is a sole manufacturer with limited capacity. In case of shut down of the applicant, the condition of the user industry would further deteriorate due to likely abnormally high import prices on account of the proposed anti-dumping duties. Under such circumstances, the user industry will be adversely impacted in case duties are imposed. The applicant is also a habitual misuser of trade remedial measures. Accordingly, we humbly request the Authority not to recommend the anti-dumping duties.
114. We are surprised to note that the Hon'ble Investigating Authority is treating China PR as a Non-Market Economy country. It is hereby submitted that in accordance with relevant provisions of the Protocol on China's accession to the WTO, the "surrogate country" practice in Anti-Dumping actions should be lacking in multilateral legal basis since 11th December 2016.
115. Without sufficient disclosure on the key data for the determination of the dumping margin and injury margin, Hebei Oxen is not in a position to make effective comments and its right of defense is limited.
116. In the determination of the NIP, the Authority is giving undue protection to the domestic industry by applying 22% Return on Capital Employed which was designed in 1987.
117. Moreover, in spite of the claim that imports from China are causing injury to the domestic industry, while the imports from China have been increasing from 2016-17 to the POI, the domestic industry has achieved a substantial increase in their profitability and return on capital employed from 2016-17 to 2018-19 but only declined during the POI
118. Number of employees has increased to 111 (Index) during the POI as compared to 100 (Index), during the base year 2016-17. However, increase in wages shows an abnormal trend, which has increased to 181 (Index) during the POI as compared to 100 (Index) during the base year 2016-17, such an unsubstantial increase. During the period when the domestic industry claimed that they were facing injury causes by imports from China, they have substantially raised the wages of the employees. The Authority is requested to critically examine the same.
119. Meanwhile, although the Authority has conducted the non-attribution analysis to see whether any factor, other than the dumped imports could have contributed to injury to the domestic industry, the Authority failed to analyze the internal factors of the domestic industry, such as deficiencies in their operating strategy or disadvantages in technology or quality of products which may result in a poor market competitiveness.
120. Finally, the Authority failed to make a due analysis of the Indian interests, i.e. the potential negative impacts of the anti-dumping measures on the interest of importers and downstream industry, which is more significant than the interest of the domestic industry.

#### **Examination by the Authority**

121. The Authority has examined the post disclosure submissions made by the other interested parties and notes that some of the comments are reiterations which have already been examined suitably and addressed adequately in the relevant paras of the final findings. The issues raised for the first time in the post-disclosure comments/submissions by the interested parties and considered relevant by the Authority are examined below.
  - i. The Authority notes the submission of the interested parties regarding imports made by the domestic industry and re-iterates that imports made by the domestic industry during POI account for 5% of total imports from China during POI which is not significant to disentitle the domestic industry in terms of Rule 2(b) of AD Rules.
  - ii. Regarding short supply of PUC in the event of shut down of the applicant and imposition of anti-dumping duties, the Authority notes that the purpose of anti-dumping duties, is not to restrict imports but in general, its purpose is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping duties therefore, would not affect the availability of the product to the consumers/users.
  - iii. The Authority notes that none of the producers/exporters have applied for market economy treatment by filing the requisite market economy questionnaire.
  - iv. The Indian Industry's interest and other issues have been examined in the following paragraph.
  - v. The Authority, post issuance of disclosure, has received comments from some importers/users of PUC who had not registered themselves as interested parties (Plastiblends India Ltd, Rajiv Plastic industries, Minocha Enterprises Private Limited, kandui industries private limited, Organization of Plastic Processors of India, Compounds And Masterbatches Manufacturers Association Of India, Dirco Polymers Pvt. Ltd., Bajaj Polyblends Pvt. Ltd., Superpack). Although none of them are registered interested parties for the present investigation, the issues highlighted by them have already been dealt by the Authority.

- vi. Vide email dated 31.05.2021, the exporter Nanyang Lingbao Pearl Pigment Co Ltd Materials submitted that its name was changed to Henan Lingbao New Materials Technology Co., Ltd) with effect from 15th December, 2020. The exporter further requested the Authority to mention its new name i.e., Henan Lingbao New Materials Technology Co., Ltd in the duty table as well as other relevant places of the Final Findings since the exporter has fully cooperated with the Authority. However, their request for change in name has not been considered by the Authority at this belated stage of investigation. The exporter is however, encouraged to file an application for change in name as per Trade notice no. 12/2018 dated 17.09.2018

#### **L. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES.**

122. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the imposition of anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods. The purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping duties, therefore, would not affect the availability of the product to the consumers. The Authority notes that the imposition of the anti-dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the product to the consumers.
123. The Authority considered whether imposition of proposed ADD shall have adverse public interest. For the same, the Authority examined whether the extension of the existing duty on imports of the product under investigation would be against the large public interest. This determination is based on consideration of information on record and interests of various parties, including domestic industry, importers and consumers of the product.
124. The Authority issued gazette notification inviting views from all interested parties, including importers, consumers and other interested parties. Authority also prescribed a questionnaire for the consumers to provide relevant information with regard to present investigations, including possible effect of ADD on their operations. The Authority sought information on, inter-alia, interchange ability of the product supplied by various suppliers from different countries, ability of the domestic industry to switch sources, effect of ADD on the consumers, factors that are likely to accelerate or delay the adjustment to the new situation caused by imposition of ADD, impact of repealing or maintaining the present duty.
125. Two importers- FC pigments private limited and RC International Pvt. Limited have filed the prescribed importer questionnaire response. Both of these users have stated that if anti-dumping duties are imposed then it will create a monopolistic situation as applicant is the only producer in India. Accordingly, applicant would increase their prices significantly to exploit the situation, which will adversely impact the user industry. Further, it will also create a huge demand-supply gap as applicant does not have the capacity to cater to the demand of the product concerned in the domestic market. In this regard, the Authority re-iterates that the imposition of the anti-dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the product to the consumers.
126. Even though the Authority has prescribed formats for the users to quantify the impact of ADD and elaborate how imposition of ADD shall adversely impact them, it is noted that none of the users have provided relevant information. It is, thus, noted that the interested parties have not established impact of ADD on the user industry with verifiable information. Further the domestic industry has quantified the impact of the recommended anti-dumping duty on the consumer industry and submitted that the impact is miniscule on different segments of the consumer. The fact that there is only one Indian producer of the product under consideration and non-imposition of anti-dumping duty will adversely impact the indigenous production of the product concern and the fact that the impact of anti-dumping duty is miniscule to the consumers of the product under consideration, the Authority is of the view that the imposition of anti-dumping duty will be in public interest.

#### **M. CONCLUSION**

127. After examining various submissions of the interested parties with regard to product under consideration, confidentiality, adequacy and accuracy of the application, questionnaire responses, selection of period of investigation, dumping margin determination, injury to the domestic industry, other factors allegedly causing injury to the domestic industry, the Authority notes that it has appropriately dealt with the issues raised in the relevant paragraphs of these findings. After examining the submissions made by the interested parties and issues raised therein and considering the facts available on record, the Authority concludes that:

- i. The Applicant constitutes domestic industry under Rule 2(b) of the Rules and considers that the application satisfied the criteria of standing in terms of Rule 5(3) of the Rules.
  - ii. Although the interested parties sought exclusion of automotive grade PUC, the Authority notes that the applicant is producing automotive grade and therefore Authority has not excluded these from the scope of the product under consideration.
  - iii. The product produced by the domestic industry is like article to PUC imported from the subject countries.
  - iv. The Authority has computed the export price at PCN level for an apple-to-apple comparison with CNV for computation of PCN wise Dumping Margin which has later been converted to weighted average level. Similarly, the landed value has been computed and compared with NIP at PCN level so as to obtain Injury Margin at PCN level and later collapsed at weighted average level. Wherever equivalent PCN of imported PCN is not produced by DI, the nearest appropriate PCN with relevant adjustments has been considered to ensure apple to apple comparison.
  - v. The claims of confidentiality made by the Applicants and the opposing interested parties have been examined, and on being satisfied about the same, the Authority has allowed the claim on confidentiality.
  - vi. The application contained all information relevant for the purpose of initiation of investigation and the application contained sufficient evidence to justify initiation of the investigation decided to initiate the present investigation.
  - vii. Considering the normal value and export price for subject goods, the dumping margins for the subject goods from subject countries have been determined, and the margins are significant.
  - viii. The Domestic Industry has suffered material injury. The examination of the imports of the subject product and the performance of the domestic industry clearly shows that the volume of dumped imports from subject countries has increased in both absolute and relative terms. The imports from the subject countries are undercutting the prices of the domestic industry. The imports from the subject countries are depressing the prices of the domestic industry. The production, sales, capacity utilization and market share of the domestic industry has declined in the POI. The performance of the domestic industry has significantly deteriorated in respect of profits, cash profits and return on capital employed. The domestic industry has suffered financial losses, cash losses and negative return on investments in the POI.
128. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Anti-Dumping Rules, the Authority considers it necessary and recommends the imposition of antidumping duty on imports of subject goods from the subject countries.
129. In terms of provision contained in Rule 4(d) & Rule 17(1) (b) of the Rules, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, definitive anti-dumping duty equal to the amount mentioned in Column 7 of the duty table below is recommended to be imposed for five (5) years from the date of the Notification to be issued by the Central Government, on all imports of subject goods as mentioned in Column 3 of the duty table originating in or exported from subject country.
130. The landed value of imports for this purpose shall be assessable value as determined by the Customs under Customs Act, 1962 and applicable level of custom duties except duties levied under Section 3, 8B, 9, 9A of the Customs Tariff Act, 1975.

#### **DUTY TABLE**

S.No.	Heading	Description	Country of Origin	Country of export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	320611	Natural Mica based Pearl Industrial Pigments excluding cosmetic grade	China PR	Any country including China PR	Nanyang Lingbao Pearl Pigment Company Limited Materials	2493	Per MT	USD

2.	-do-	-do-	China PR	Any country including China PR	Rika Technology Company Limited	2023	Per MT	USD
3.	-do-	-do-	China PR	Any country including China PR	Guangxi Chesir Pearl Material Company Limited	2813	Per MT	USD
4.	-do-	-do-	China PR	Any country including China PR	Zhejiang Ruicheng New Material Company Limited	2674	Per MT	USD
5.	-do-	-do-	China PR	Any country including China PR	Fujian Kuncai Material Technology Company Limited	214	Per MT	USD
6.	-do-	-do-	China PR	Any country including China PR	Hebei Oxen New Materials Co., Ltd.	2406	Per MT	USD
7.	-do-	-do-	China PR	Any country including China PR	Any producer other than serial no 1 to 6	5529	Per MT	USD
8.	-do-	-do-	Any country other than China PR	China PR	Any producer	5529	Per MT	USD

#### **O. Further Procedure**

131. An appeal against the order of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

ANANT SWARUP, Joint Secretary and Designated Authority